

DOCUMENT RESUME

02903 - [A1953021]

[Claims for Overtime Pay]. B-186297. July 11, 1977. 4 pp.

Decision re: John Ulrich, et al.; by Robert P. Koller, Deputy Comptroller General.

Issue Area: Personnel Management and Compensation: Compensation (305).

Contact: Office of the General Counsel: Civilian Personnel.

Budget Function: General Government: Central Personnel Management (805).

Organization Concerned: General Services Administration: Kansas City Regional Office, MO.

Authority: Federal Employees Pay Act of 1945, as amended, sec. 201 (5 U.S.C. 5542). 5 C.F.R. 550.111(c). GSA Policy Manual, ADM P1000.2B, sec. 92. Baylor v. United States, 198 Ct. Cl. 331 (1972). Rapp and Hawkins v. United States, 167 Ct. Cl. 652, 340 F.2d 635 (1964). Adams v. United States, 162 Ct. Cl. 766 (1963). Anderson v. United States, 136 Ct. Cl. 365 (1956).

Hoyt Shields, a Certifying Officer and the Finance Director for the General Services Administration, Region 6, requested an advance decision as to the propriety of compensating five employees with overtime pay based on the unused balances of compensatory time from a prior year. Employees could not be granted compensation for the overtime worked on the basis of the present record because the person who authorized the overtime did not have delegated authority to do so. Payment of the claims could be based on post approval by an authorized official. (Author/SC)

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DECISION



*Civ. Per.
Heitzman*
THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-186297

DATE: JUL 11 1977

MATTER OF:

John Ulrich, et al. -
Claims for overtime pay

DIGEST:

Former regional director of GSA records center authorized overtime and was not one of the officials with delegated authority to do so. Employees cannot be granted compensation for overtime worked on basis of record before us since decisions of this Office and Court of Claims establish that appropriate action by an official having authority to order or approve overtime is a condition precedent to recovery of compensation for overtime work unless the regulation is unreasonable or the official has actively induced the overtime. However, GSA regulations permit post-approval under three criteria, and we would not object to payment based on such approval by an authorized official.

This matter is before us on the request of April 5, 1976, by Mr. Hoyt Shields, a certifying officer and the Finance Director for the General Services Administration (GSA), Region 6, Kansas City, Missouri. Mr. Shields requests an advance decision as to the propriety of compensating five General Schedule employees of GSA with overtime pay based on unused balances of compensatory time from a prior year. A sixth employee, Mr. John Ulrich, used all his compensatory time with the exception of one-half hour. However, Mr. Ulrich believed he was promised compensatory time off at the rate of one and one-half hours for each hour of overtime worked. Mr. Ulrich has requested overtime pay in lieu of compensatory time earned due to his misunderstanding about the amount of compensatory time hours earned.

GSA has not paid the employees because advance approval for paid overtime or compensatory time is required by its regulations, with some exceptions that are not pertinent here. Advance approval is also necessary even if employees choose to take compensatory time off in lieu of overtime pay. GSA Policy Manual, ADP1 P1000.2B § 92.

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The employees were located at the National Archives and Records Service in GSA Region 3, Chicago, Illinois, and approval of overtime or compensatory time was under the jurisdiction of Region 4 in Atlanta, Georgia. The overtime was not authorized in advance because the former director of the GSA Region 3 Records Center was not aware of the requirement that this be done. In addition, discrepancies were found in the records used for the preparation and computation of overtime and compensatory time. However, the overtime due each employee has been reconstructed to the best extent possible, and the Administrative Office has recommended approval of its payment.

The Court of Claims has held in numerous decisions that the absence of official written authorization or approval of overtime work does not necessarily defeat a claim for overtime compensation under section 201 of the Federal Employees Pay Act of 1945, as amended, 5 U.S.C. § 5542. Baylor v. United States, 196 Ct. Cl. 331 (1972); Rapp and Hawkins v. United States, 167 Ct. Cl. 852, 340 F.2d 635 (1964); Byrnes v. United States, 163 Ct. Cl. 167, 324 F.2d 960 (1963), as amended, 330 F.2d 986 (1964); Adams v. United States, 162 Ct. Cl. 766 (1963); and Anderson v. United States, 136 Ct. Cl. 365 (1956).

In Baylor v. United States, supra, a claim by uniformed guards of GSA for overtime compensation for various preliminary and postliminary duties, the Court of Claims stated the standards for determining whether overtime was properly "ordered or approved." The court explained its holding on page 359 as follows:

"* * * If there is a regulation specifically requiring overtime promulgated by a responsible official, then this constitutes 'officially ordered or approved' but, at the other extreme, if there is only a 'tacit expectation' that overtime is to be performed, this does not constitute official order or approval.

"* * * Where the facts show that there is more than only a 'tacit expectation' that overtime be performed, such overtime has been found to be compensable as having been 'officially ordered or approved,' even in the absence of a regulation specifically requiring a certain

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number of minutes of overtime. Where employees have been 'induced' by their superiors to perform overtime in order to effectively complete their assignments and due to the nature of their employment, this overtime has been held to have been 'officially ordered or approved' and therefore compensable."

However, the decisions of this Office and those of the United States Court of Claims clearly establish that appropriate action by an official having authority to order or approve overtime is a condition precedent to recovery of compensation for overtime work unless the regulation is unreasonable or the official who has withheld formal approval has actively induced or encouraged the overtime. See Baylor, supra, at 360-361, 5 C.F.R. § 550.111(c) (1976).

Although, in this case, the former director of the Records Center clearly induced the employees to work overtime, he was not authorized under GSA regulations to approve overtime except in emergency situations. The employees were located in GSA Region 5, Chicago, Illinois, and the regulations required advance approval of overtime or compensatory time by the Regional Commissioner of Region 4, Atlanta, Georgia.

We cannot state from the record before us that the overtime was "officially ordered or approved," because the record does not show either advance approval or active inducement by the Regional Commissioner in Atlanta. Hence, we cannot hold that the employees may be compensated for the overtime worked. And since we cannot say that the overtime was "officially ordered or approved," we need not further consider Mr. Ulrich's claim.

However, we note that GSA Policy Manual, ADM P 1000.2B, sec. 92a(2), February 27, 1973, provides an exception permitting approval of overtime after-the-fact in instances of: (1) bona fide emergencies where it is impossible to obtain advance authorization; (2) in situations involving public health or safety; or (3) a work requirement of such urgency that there is no doubt that the overtime would be approved. We would have no objection to the payment of these claims by the agency based upon a statement in writing from an authorized official that

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the overtime in question is approved after-the-fact, upon the ground of one or more of the three criteria listed in the regulation.

R.F. KELLER

Deputy Comptroller General
of the United States